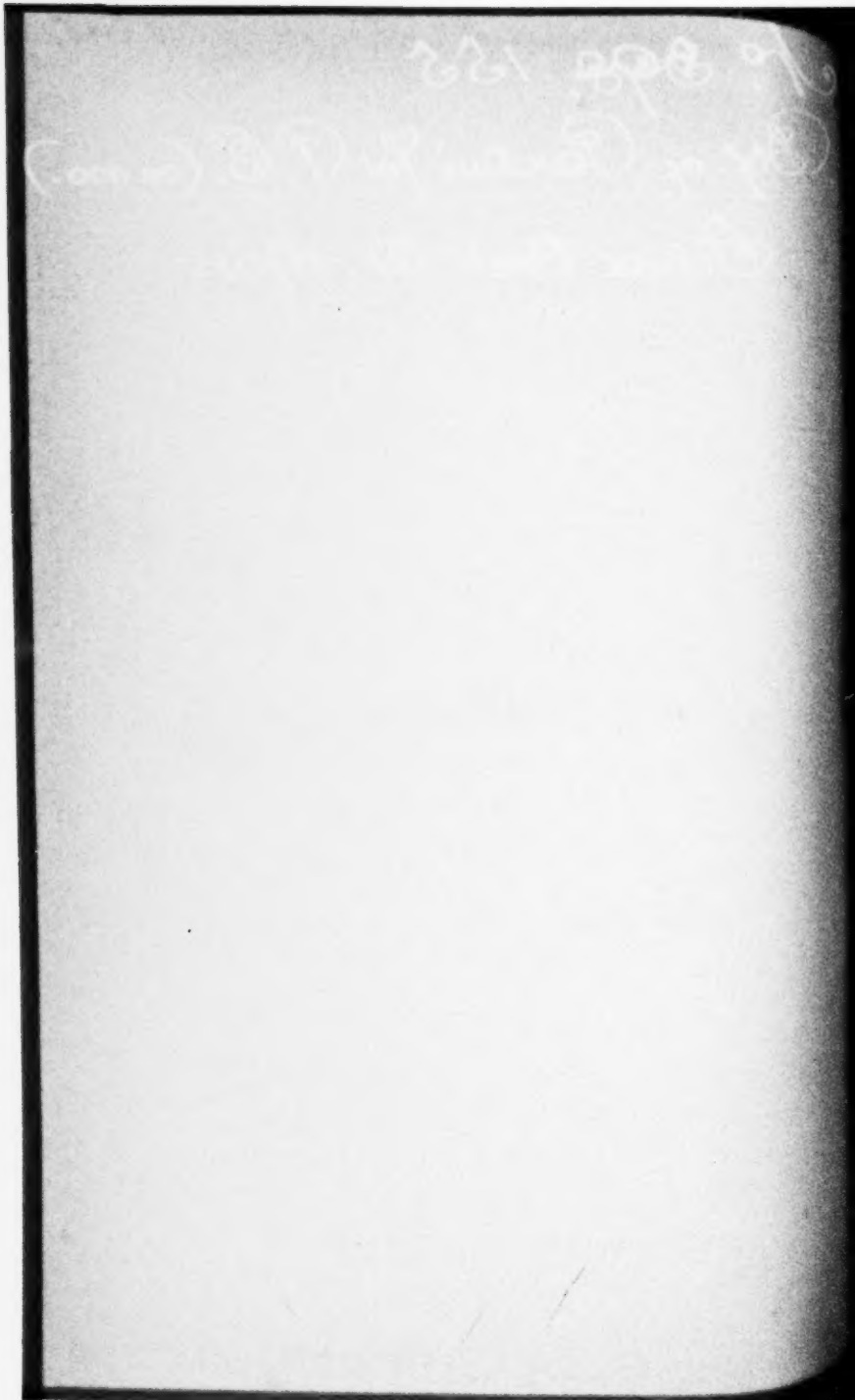

# Supreme Court of the United States

## OCTOBER TERM, 1901.

*No. 398.*

IN ERROR TO THE SUPREME COURT OF CALIFORNIA.

JOHN E. SEXTON, PLAINTIFF IN ERROR,

*vs.*

THE PEOPLE OF THE STATE OF CALIFORNIA.

ON MOTION TO DISMISS OR AFFIRM.

## BRIEF FOR PLAINTIFF IN ERROR.

### STATEMENT.

The plaintiff in error was convicted under an indictment found by the grand jury of the county of El Dorado, in the State of California, which indictment is as follows (Record, fols. 5 and 6):

"IN THE SUPERIOR COURT OF THE COUNTY OF EL DORADO,
"STATE OF CALIFORNIA, THE 25TH DAY OF NOVEMBER,
"A. D. 1899.

"THE PEOPLE OF THE STATE OF CALIFORNIA }
*vs.*
"JOHN E. SEXTON and S. H. BRIGGS. }

"John E. Sexton and S. H. Briggs are accused by the "grand jury of said county of El Dorado, by this indictment, "of the crime of extortion, committed as follows, to wit:

"The said John E. Sexton and S. H. Briggs, prior to the "finding of this indictment, on or about the 20th day of "June A. D. 1898 at the county of El Dorado, State of Cali- "fornia, did willfully, unlawfully and feloniously obtain "from one C. Greenwald certain personal property consist- "ing of money, the property of said C. Greenwald, to the "amount and value of thirty dollars, with the consent of "said Greenwald induced by the wrongful use and exercise "upon him of fear by means of a threat then and there "made by the said John E. Sexton and S. H. Briggs to "accuse him the said Greenwald, of the crime of having, in "violation of the laws of the United States of America, sold "and delivered cigars in a form other than a new box not "before used for the purpose of packing cigars therein con- "trary to the form force and effect of the statute in such "case made, and provided, and against the peace and dignity "of the people of the State of California.

"ABE DARLINGTON,
"*District Attorney.*"

Endorsed: A true bill, &c. R. B. Patterson, foreman of the grand jury.

Sundry proceedings subsequent to said conviction were had, which are shown by the transcript, and, finally, the defendant was sentenced (folio 12) to be "punished by im-"prisonment in the State prison of the State of California at "Folsom, for the term of two years."

The plaintiff in error thereupon appealed to the supreme court of the State of California (folios 13, 14), by which court, after argument, the conviction was affirmed.

Plaintiff in error thereupon sued out a writ of error in this court, directed to the supreme court of the State of California, with citation thereon, and in due course the same was returned into this court and transcript filed.

The errors assigned are as follows, viz. (folios 22, 23):

1. That the supreme court of the State of California committed manifest error in said action in deciding that section five hundred and eighteen of the Penal Code of the State of California is not in conflict with and repugnant to the provisions of section 1 of article 3 and with section 1 of article 14 of the Constitution of the United States, and with section 711 and section 5484 of the Revised Statutes of the United States.

2. That defendant is, by the judgment of the superior court in and for the county of El Dorado and by the said judgment of the supreme court of the State of California, affirming said judgment of said superior court, deprived of his liberty without due process of law, and is denied the equal protection of the law, contrary to the provisions of section 1, article 14, of the Constitution of the United States.

So much of the opinion of the supreme court of the State

of California as is material to the present issue is as follows, viz:

"Defendant has been convicted of the crime of extortion, "and appeals to this court. By the indictment it was "alleged that defendant obtained thirty dollars from one "Greenwald under fear induced by threats upon the part "of defendant to accuse him (Greenwald) of the 'crime of "having, in violation of the laws of the United States of "America, sold and delivered cigars other than in a new box "not before used for the purpose of packing cigars therein.' "In substance it may be said that defendant threatened to "accuse Greenwald of violating the United States revenue "laws, and under fear induced by such threats secured from "Greenwald the aforesaid sum of $30.

"It is insisted that the facts do not constitute an offense "against the laws of the State of California, but upon the "contrary constitute a crime exclusively within the juris- "diction of the Federal courts.

"We find nothing in this contention. The defendant is "charged with the crime of extortion, an offense directly "within the jurisdiction of the State courts. He is not "charged with a violation of a Federal statute, but with a "violation of a State statute. He threatens to accuse a man "with the commission of a crime. It makes no difference if "that crime be one solely triable in the Federal courts, for "defendant is not being tried for that crime.

"If he had threatened to have Greenwald arrested upon "the charge of counterfeiting the money of this country, and "was charged with the crime of extortion for that reason, "clearly his offense would be one against the laws of this "State.

"It would be extortion as defined by the penal code of this "State, and this court would not be concerned as to whether "or not defendant's crime was also punishable under Fed- "eral laws.

* * * * * *

"While the evidence tending to support the conviction in "this case is very weak, we are not prepared to say it is in- "sufficient. Owing to the peculiar circumstances of the case, "and the character of the evidence relied upon to support "the verdict, we think the law would have been well satisfied "with a judgment finding the defendant guilty of a misde- "meanor."

POINTS.

I.

Before proceeding to the consideration of the above errors we may be permitted to call the attention of this court to the language of the supreme court of California (to be found on page 8, folio 17), which is as follows:

"Owing to the peculiar circumstances of the case, and "character of the evidence relied upon to support the "verdict, we think the law would have been well satisfied "with a judgment finding the defendant guilty of a mis- "demeanor. But that is a matter beyond review by this "court."

It thus appears that this plaintiff in error is condemned to suffer for a crime of which *the supreme court of California does not deem him guilty.*

While it is true that this court is not, on that ground, to be called upon for a reversal of the action of the courts of the State of California, it is nevertheless a fact upon which this court may feel disposed not to rely upon mere technicality in the consideration of this case; and, in the interest of the liberty of the plaintiff in error, we feel warranted in calling the attention of the court to it.

## II.

The learned attorney general of the State of California, in his brief submitted upon this motion, devotes nearly the whole of it (pages 7 to 14, inclusive) to a consideration of the question whether sections 518–519 of the Penal Code of the State of California are repugnant to the Constitution of the United States (section 1, article III, and section 1, article XIV). This is not the main contention of the plaintiff in error. He contends that his conviction under those sections of the Penal Code is void because those sections are in conflict with sections 711 and 5484 of the Revised Statutes of the United States, which are as follows, viz:

SEC. 711. "The jurisdiction vested in the courts of the "United States in the cases and proceedings hereinafter 'mentioned shall be exclusive of the courts of the several "States.

"*First.* Of *all crimes* and *offenses cognizable under the* "*authority of the United States.*"

This has been the law since 1789.

The Revised Statutes of the United States prescribe in—

SEC. 5484. "Every person who shall receive any money "or other valuable thing under a threat of informing, or as "a consideration for not informing against any violation of "any internal-revenue law, shall, on conviction thereof be "punished by a fine not exceeding two thousand dollars, or "by imprisonment not exceeding one year, or both, at the "discretion of the court, with costs of prosecution."

It is quite clear that the offence charged in the indictment found against the plaintiff in error is the obtaining of thirty dollars from one Greenwald under a threat of informing against him for a violation of the revenue law of the United States. The language of the indictment is that plaintiff in error did obtain the said money by threatening to accuse said Greenwald of the crime of having, in violation of the internal-revenue laws, sold and delivered cigars in a form other than in a new box not before used for the purpose of packing cigars therein; and it is equally clear that this is an offense prescribed by the Revised Statutes of the United States, of which section 3392 is as follows:

SEC. 3392. "All cigars shall be packed in boxes not before "used for that purpose, containing, respectively, twenty-five, "fifty, one hundred, two hundred and fifty, or five hundred "cigars each; and any person who sells or offers for sale, or de- "livers or offers to deliver, any cigars in any other form than "in new boxes as above described, or who packs in any box "any cigars in excess of the number provided by law to be put "in each box respectively, or who falsely brands any box, "or affixes a stamp on any box denoting a less amount of "tax than that required by law, shall be fined for each such "offence not less than one hundred dollars nor more than

"one thousand dollars, and be imprisoned not less than six "months nor more than two years: *Provided*, That nothing "in this section shall be construed as preventing the sale of "cigars at retail by retail dealers who have paid the special "tax as such from boxes packed, stamped and branded in "the manner prescribed by law."

III.

Section 518 of the Penal Code of California, under which the plaintiff in error stands convicted, is as follows:

"Extortion is the obtaining of property from another "with his consent, induced by a wrongful use of force or "fear, or under color of official right."

Section 519 provides as follows, to wit:

"SEC. 519. Fear such as will constitute extortion may "be induced by a threat, either:

1. * * *

2. "To accuse him, or any relative of his or member of "his family of any crime."

If the United States laws failed to make the offence of extorting money "under threats of informing or as a con- "sideration for not informing against any violation of any "internal-revenue law," it would be perfectly competent for the State of California to punish such offence; but the United States having made such an extortion a crime under its revenue laws, the State of California is without jurisdiction of the offence, and it must be punished, if at all, under the United States law alone.

IV.

There are numerous crimes defined by both United States and State laws wherein the United States courts have exclusive jurisdiction, among which are:

1. Homicide charged against United States officers, committed while in the performance of their duties.

(*a.*) By internal-revenue officers.

*Tennessee vs. Davis*, 100 U. S., 349.

(*b.*) By a United States marshal in the protection of a justice of this court from threatened death.

*Cunningham vs. Nagle*, 135 U. S., 1.

*People vs. Welch*, 36 N. E. Rep., 328 (N. Y. court of appeals), was a case of manslaughter committed by the defendant in negligently running a tugboat, of which he had charge, upon the yacht *Amelia*, whereby one Jackson was drowned.

It was claimed that inasmuch as this was an offence under section 5344 of the Revised Statutes of the United States, the State courts had no jurisdiction; but the court of appeals decided that the jurisdiction of the State and United States courts was concurrent, *because* section 5328, which was part of the title containing section 5344, provided that "nothing "in this title shall be held to take away or impair the juris- "diction of the courts of the several States under the law "thereof."

2. Embezzlement by cashiers and other officers or employés of national banks.

*Commonwealth vs. Fenton*, 101 Mass., 204.

The lucid language of the court in this last case is well worth citing here:

"The act of Congress from which the national banks de-
"rive their existence and organization, makes full and ample
"provision for the crime of embezzlement by any cashier, or
"other officer of such bank.

"It makes no provision or reservation for its protection,
"and punishment by any State authority, but makes it cog-
"nizable under the authority of the United States.

"By the terms of the judiciary act (U. S. Statutes, 1789,
"sec. 511, U. S. Rev. Stat.) the courts of the United States
"are vested with the exclusive cognizance of all crimes that
"are made punishable by act of Congress, except when the
"act of Congress makes other provision."

*People vs. Fonda*, 62 Mich., 401.
*Com. vs. Ketner*, 92 Pa., 372.

*In re Loney*, 134 U. S., 372, Mr. Justice Gray said:

"By the statutes of the United States the courts of the
"United States have jurisdiction exclusive of the courts of
"the several States, of 'all crimes and offences cognizable
"under the laws of the United States' (Rev. Stat., sec. 711,
"ch. 1), except where otherwise provided by law."

V.

The instance given by the supreme court of California of the crime of counterfeiting the money of the United States is without point, for the reason that the statute of the United States which provides for the punishment of counterfeiting contains the following clause, viz:

"And be it further enacted that nothing in this act con-
"tained shall be construed to deprive the courts of the in-
"dividual States of jurisdiction under the laws of the
"several States over offences made punishable under this
"act."

In the case of *Fox vs. State*, 5 How., 410, this court sustained the jurisdiction of the State court (of Ohio) upon the ground that the proviso in the statute excepts the offences of counterfeiting from the clause of the act of 1789, giving exclusive jurisdiction to the United States courts of offences prescribed by the laws of the United States.

VI.

*The question presented is a Federal question.* It comes clearly within the definition given by this court in *Tennessee vs. Davis* (*supra*), at page 258:

"A case arises under the Constitution, not merely when
"somebody comes into court to demand something con-
"ferred upon him by the Constitution or law of the United
"States or a treaty; but whenever its correct decision as to
"the rights, privilege, claim, protection or defence of a
"party in whole or in part, depends upon the construction
"of either."

And again in *Starin vs. New York*, 115 U. S., 248, this court said:

"Where it appears that some title, right, privilege or im-
"munity on which recovery depends will be defeated by one
"construction of the Constitution or a law of the United

"States, or sustained by the opposite construction, the case "is one arising under the Constitution or laws of the United "States."

VII.

Tested by these citations, it seems perfectly clear that the courts of the State of California have no jurisdiction over the offence charged in this indictment because the offence is one punishable under the internal-revenue law of the United States, and there is no reservation to the States of any right to punish such offences to be found in those laws.

VIII.

The attorney general of California by his third point seems to concede that this court will hold that the question presented is a Federal question.

That being the case, it is not the practice of the court to decide such questions upon a motion to dismiss or affirm.

We have not been able to find that the matter in issue here has ever been decided by this court except in the general manner above indicated in the cases cited. If there had been any such decision we may be quite sure that the learned attorney general of California would have found and presented it.

IX.

We do not discuss the question to which the brief of the attorney general of California pays so much attention in his first and second points, for the reason that it follows as corollaries to our contention that, if the views we have set

forth are sound, this plaintiff in error has been and is "deprived of his liberty without due process of law, contrary to the provisions of sec. 1 of art. XIV of the Constitution of the United States."

X.

The motion to dismiss or affirm should be denied.

Respectfully submitted.

JAMES PARKER,
*Attorney and of Counsel for Plaintiff in Error.*